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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,153	08/01/2003	Thomas Schueller	19531	1875
7590	04/19/2005		EXAMINER	
LAWRENCE E LAUBSCHER SR LAUBSCHER LAW OFFICES 745 SOUTH 23RD STREET SUITE 300 ARLINGTON, VA 22202			SOTELO, JESUS D	
			ART UNIT	PAPER NUMBER
			3617	
DATE MAILED: 04/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/632,153	SCHUELLER, THOMAS
	<b>Examiner</b>	<b>Art Unit</b>
	Jesús D. Sotelo	3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-61 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 27-61 is/are allowed.  
 6) Claim(s) 1-4,8,9,15,17,24 and 25 is/are rejected.  
 7) Claim(s) 5-7,10-14,16,18-23 and 26 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 08 February 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. Claims 1-61 are in the application.

### *Drawings*

2. The proposed drawings filed 2/8/2005 are objected to. The quality of the reproduction is very poor and includes extraneous lines.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 8, 9, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kisevalter.

Kisevalter discloses a vessel propulsion system with a propulsion device 5 immersed partially in water; the propulsion device includes a cover partially enclosing the propulsion device forming a water conveying channel between the cover and the propulsion device. The outer circumferential surface of the propulsion device has several teeth 6 arranged one behind the other. Each tooth includes a leading edge and a trailing edge generally as in claim 9. The upper edge of the cover is above the vessel water line.

5. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ives. Ives discloses a propulsion device generally as in claim 1 and including a revolving belt as in claim 3.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kisevalter in view of Legoy et al.

Legoy et al disclose a propulsion system similar to that of Kisevalter and teaches providing the propulsion device with floats rotatable on the axis of rotation of the propulsion device. In view of these disclosures, it would have been obvious to one skilled in the art to provide the propulsion device of Kisevalter with floats generally as taught by Legoy et al. Such an arrangement would have been desirable to provide stability to the propulsion device in Kisevalter.

***Allowable Subject Matter***

8. Claims 5-7, 10-14, 16, 18-23, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 27-61 are allowed.

***Response to Arguments***

10. Applicant's arguments filed 2/08/2005 have been fully considered but they are not persuasive.

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11. Applicant's argument that the channel formed by the cover has functions not present in the prior art is not persuasive. The claim merely call for a cover partially enclosing the propulsion device and cooperating with the circumferential surface of the propulsion device to produce a water conveying flow channel which is free of air when in operation. The recitation that air is fully removed "in the operable condition" is merely a statement of desired functional result. The structured recited in the claims is not patentably distinct from the structured disclosed by the references.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jesús D. Sotelo whose telephone number is 571-272-6686. The examiner can normally be reached on Mon. - Fri. 6:00 AM -2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Jesus D. Sotelo*  
*Jesus D. Sotelo 4/14/05*  
*Primary Examiner*  
*Art Unit 3617*  
*KNX 03D69 ☺*

sotelo;jds  
April 14, 2005